

AMENDED IN SENATE JUNE 27, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1735

Introduced by ~~Committee on Utilities and Commerce (Levine (Chair), Baca, Cohn, De La Torre, Jerome Horton, Montanez, and Ridley-Thomas)~~ Assembly Member De La Torre

February 24, 2005

~~An act to amend Section 2881 of the Public Utilities Code, relating to telecommunications. An act to amend Section 53066.3 of the Government Code, relating to cable television.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1735, as amended, ~~Committee on Utilities and Commerce De La Torre. Telecommunications: telephone corporations: surcharge. Cable television franchises.~~

Existing law provides that if a city, county, or city and county elects to grant an additional cable television franchise in an area where a franchise has already been granted and where an existing cable operator is providing service or certifies that it is ready, willing, and able to provide service, the additional franchise shall require that the franchisee wire and serve the same geographical area within a reasonable time and be subject to other specified conditions.

This bill would impose the same conditions if any additional cable television franchise is granted to a public utility, a telephone corporation, or its affiliate for an area within the public utility's or telephone corporation's service area or areas.

~~The existing federal Telecommunications Act of 1996, establishes a program of cooperative federalism for the regulation of telecommunications to attain the goal of local competition, while implementing specific, predictable, and sufficient federal and state~~

~~mechanisms to preserve and advance universal service, consistent with certain universal service principles. Existing federal law requires that a manufacturer of telecommunications equipment or customer premises equipment ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, as defined, if readily achievable. Existing federal law further requires that a provider of telecommunications services, as defined, ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable.~~

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to design and implement programs under which telephone corporations provide access to the telecommunications system for subscribers who are deaf, hearing impaired, or disabled, including programs to provide specialized or supplemental telephone communications equipment. The commission is required, until January 1, 2006, to establish a rate recovery mechanism through a surcharge, not to exceed $\frac{1}{2}\%$ on interstate service, to allow providers of the equipment and services to recover their costs. Existing law authorizes the commission, until January 1, 2006, to adjust the surcharge upward or downward within the specified $\frac{1}{2}\%$ cap, to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive.~~

~~This bill would extend, until January 1, 2010, the authority of the commission to establish a rate recovery mechanism through a surcharge and to adjust the surcharge upward or downward within the specified $\frac{1}{2}\%$ cap, to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no. State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature hereby finds and declares the
- 2 following:
- 3 (a) It is the intent of the Legislature, and in the public interest,
- 4 to promote price competition, broader consumer choice, and
- 5 improved customer services in the cable television marketplace
- 6 by removing barriers to open and competitive markets.

1 (b) Section 53066.3 of the Government Code was enacted at a
2 time when communities in this state were predominantly served
3 by a single cable provider and a single telephone company, each
4 offering a single service.

5 (c) Since the enactment of Section 53066.3, the
6 communications marketplace in this state has undergone a
7 radical transformation, with the explosion of new technologies
8 that has finally brought the objectives of competition, consumer
9 choice, and rapid innovation close to reality in this state.

10 (d) Section 53066.3, as it currently exists, poses a threat to the
11 emergence of cable competition in this state by creating a barrier
12 to entry for telephone corporations seeking to provide
13 competitive cable television service in this state.

14 (e) It is the intent of the Legislature, and in the public interest,
15 that local government be given the flexibility to craft cable
16 television franchise areas that encourage competition and best
17 meet the needs of their residents, unencumbered by how
18 incumbent cable operators constructed their systems.

19 (f) It is the further intent of the Legislature, and in the public
20 interest, to continue to ensure that the benefits of cable
21 competition are brought to residents of this state without regard
22 to income or race, and that the same public, educational, and
23 governmental access requirements are applied to all cable
24 television providers, including telephone corporations.

25 (g) It is the intent of the Legislature that telephone
26 corporations that are granted a cable television franchise, and
27 that provide both video service and telecommunications services,
28 including, but not limited to, basic telephone service, over the
29 same facilities or network, shall not fund the provision of cable
30 service and other broadband services through increases to basic
31 telephone service rates.

32 (h) It is the intent of the Legislature, and it is an important
33 state interest, to continue the Legislature's long-held policy to
34 ensure that local franchising of cable television brings the
35 benefits of cable competition to all residents of this state,
36 including lower income and minority residents, and residents in
37 less-populated areas, and that the comparable franchise
38 requirements, including, but not limited to, service area,
39 build-out and density requirements, are applied to and enforced

1 upon all cable television franchises authorized by a franchising
2 authority pursuant to Section 53066 of the Government Code.

3 SEC. 2. Section 53066.3 of the Government Code is amended
4 to read:

5 53066.3. (a) If a city, county, or city and county elects to
6 grant an additional cable television franchise in an area where a
7 franchise has already been granted to a cable television operator,
8 it shall do so only after a public hearing noticed pursuant to
9 Section 6066, in a newspaper of general circulation as defined in
10 Section 6000, where all of the following have been considered:

11 (1) Whether there will be significant positive or negative
12 impacts on the community being served.

13 (2) Whether there will be an unreasonable adverse economic
14 or aesthetic impact upon public or private property within the
15 area.

16 (3) Whether there will be an unreasonable disruption or
17 inconvenience to existing users, or any adverse effect on future
18 use, of utility poles, public easements, and the public
19 rights-of-way contrary to the intent of Section 767.5 of the Public
20 Utilities Code.

21 (4) Whether the franchise applicant has the technical and
22 financial ability to perform.

23 (5) Whether there is any impact on the franchising authority's
24 interest in having universal cable service.

25 (6) Whether other societal interests generally considered by
26 franchising authorities will be met.

27 (7) Whether the operation of an additional cable television
28 system in the community is economically feasible.

29 (8) Such other additional matters, both procedural and
30 substantive, as the franchising authority may determine to be
31 relevant.

32 (b) Nothing in this section prevents any city, county, or city
33 and county from considering the approval or denial of an
34 additional cable service franchise in any area of the city, county,
35 or city and county, subject to compliance with subdivision (d), or
36 the imposing of additional terms and conditions upon the
37 granting of the franchise, as the city, county, or city and county
38 determines is necessary or appropriate.

39 (c) The city, county, or city and county shall make a final
40 determination as to whether to grant the additional franchise

1 within six months of the application date unless the jurisdiction
2 can establish that the applicant has unreasonably delayed
3 proceedings designed to consider the matters set forth in
4 paragraphs (1) to (8), inclusive, of subdivision (a).

5 (d) Any additional franchise granted to provide cable
6 television service in an area in which a franchise has already
7 been granted and where an existing cable operator is providing
8 service or certifies to the franchising authority that it is ready,
9 willing, and able to provide service, shall require the franchisee
10 to wire and serve the same geographical area within a reasonable
11 time and in a sequence which does not discriminate against lower
12 income or minority residents, and shall contain the same public,
13 educational, and governmental access requirements that are set
14 forth in the existing franchise. This subdivision does not apply
15 where all existing cable operators certify to the franchising
16 authority that they do not intend to provide service within a
17 reasonable time to the area to be initially served by the additional
18 franchise.

19 (e) *Notwithstanding subdivision (d), any additional cable*
20 *television franchise granted to a new entrant offering cable*
21 *television service, including, but not limited to, a public utility, as*
22 *defined in Section 216 of the Public Utilities Code, a telephone*
23 *corporation, as defined in Section 234 of the Public Utilities*
24 *Code, or an affiliate of that public utility or corporation, for an*
25 *area within that public utility's or telephone corporation's*
26 *service area or areas shall require that franchisee to serve its*
27 *cable television franchise area within a reasonable time and in a*
28 *sequence that does not discriminate against lower income or*
29 *minority residents, pursuant to Section 53066.2. The additional*
30 *cable television franchise granted to a public utility, a telephone*
31 *corporation, or its affiliate shall contain the same public,*
32 *educational, and governmental access requirements that are set*
33 *forth in the existing cable television franchise.*

34 (1) *Within 45 days after the grant of an additional cable*
35 *television franchise serving the same or any portion of a*
36 *geographic area served by an existing franchisee, a cable*
37 *television franchisee existing prior to the grant of the additional*
38 *franchise or the franchising authority may make a written*
39 *request to reform any term or terms in the franchise between the*

1 *franchising authority and the cable television franchisee existing*
2 *prior to the grant of the additional franchise.*

3 (2) *Nothing in this section shall apply to any video program*
4 *offering or service offered via Internet protocol technology that*
5 *is not deemed to be a “cable service” under Title VI of the*
6 *Telecommunications Act of 1934, as amended.*

7 (f) *Pursuant to Section 53066.2, a city, county, or city and*
8 *county shall assure that access to cable services is not denied by*
9 *any additional cable television franchise granted to a telephone*
10 *corporation to any group of potential residential cable*
11 *subscribers because of the income of the residents of the local*
12 *area in which the group resides.*

13 ~~SECTION 1. Section 2881 of the Public Utilities Code is~~
14 ~~amended to read:~~

15 ~~2881. (a) The commission shall design and implement a~~
16 ~~program to provide a telecommunications device capable of~~
17 ~~serving the needs of individuals who are deaf or hearing~~
18 ~~impaired, together with a single party line, at no charge~~
19 ~~additional to the basic exchange rate, to any subscriber who is~~
20 ~~certified as an individual who is deaf or hearing impaired by a~~
21 ~~licensed physician and surgeon, audiologist, or a qualified state~~
22 ~~or federal agency, as determined by the commission, and to any~~
23 ~~subscriber that is an organization representing individuals who~~
24 ~~are deaf or hearing impaired, as determined and specified by the~~
25 ~~commission pursuant to subdivision (c). A licensed hearing aid~~
26 ~~dispenser may certify the need of an individual to participate in~~
27 ~~the program if that individual has been previously fitted with an~~
28 ~~amplified device by the dispenser and the dispenser has the~~
29 ~~individual’s hearing records on file prior to certification.~~

30 ~~(b) The commission shall also design and implement a~~
31 ~~program to provide a dual-party relay system, using third-party~~
32 ~~intervention to connect individuals who are deaf or hearing~~
33 ~~impaired and offices of organizations representing individuals~~
34 ~~who are deaf or hearing impaired, as determined and specified by~~
35 ~~the commission pursuant to subdivision (c), with persons of~~
36 ~~normal hearing by way of intercommunications devices for~~
37 ~~individuals who are deaf or hearing impaired and the telephone~~
38 ~~system, making available reasonable access of all phases of~~
39 ~~public telephone service to telephone subscribers who are deaf or~~
40 ~~hearing impaired. In order to make a dual-party relay system that~~

1 will meet the requirements of individuals who are deaf or hearing
2 impaired available at a reasonable cost, the commission shall
3 initiate an investigation, conduct public hearings to determine the
4 most cost-effective method of providing dual-party relay service
5 to the deaf or hearing impaired when using a telecommunications
6 device, and solicit the advice, counsel, and physical assistance of
7 statewide nonprofit consumer organizations of the deaf, during
8 the development and implementation of the system. The
9 commission shall phase in this program, on a geographical basis,
10 over a three-year period ending on January 1, 1987. The
11 commission shall apply for certification of this program under
12 rules adopted by the Federal Communications Commission
13 pursuant to Section 401 of the federal Americans with
14 Disabilities Act of 1990 (Public Law 101-336).

15 (c) The commission shall also design and implement a
16 program whereby specialized or supplemental telephone
17 communications equipment may be provided to subscribers who
18 are certified to be disabled at no charge additional to the basic
19 exchange rate. The certification, including a statement of visual
20 or medical need for specialized telecommunications equipment,
21 shall be provided by a licensed optometrist or physician and
22 surgeon, acting within the scope of practice of his or her license,
23 or by a qualified state or federal agency as determined by the
24 commission. The commission shall, in this connection, study the
25 feasibility of, and implement, if determined to be feasible,
26 personal income criteria, in addition to the certification of
27 disability, for determining a subscriber's eligibility under this
28 subdivision.

29 (d) The commission shall establish a rate recovery mechanism
30 through a surcharge not to exceed one-half of 1 percent
31 uniformly applied to a subscriber's intrastate telephone service,
32 other than one-way radio paging service and universal telephone
33 service, both within a service area and between service areas, to
34 allow providers of the equipment and service specified in
35 subdivisions (a), (b), and (c), to recover costs as they are incurred
36 under this section. The surcharge shall be in effect until January
37 1, 2010. The commission shall require that the programs
38 implemented under this section be identified on subscribers'
39 bills, and shall establish a fund and require separate accounting
40 for each of the programs implemented under this section.

~~(e) The commission shall determine and specify those statewide organizations representing the deaf or hearing impaired that shall receive a telecommunications device pursuant to subdivision (a) or a dual-party relay system pursuant to subdivision (b), or both, and in which offices the equipment shall be installed in the case of an organization having more than one office.~~

~~(f) The commission may direct any telephone corporation subject to its jurisdiction to comply with its determinations and specifications pursuant to this section.~~

~~(g) The commission shall annually review the surcharge level and the balances in the funds established pursuant to subdivision (d). Until January 1, 2010, the commission shall be authorized to make, within the limits set by subdivision (d), any necessary adjustments to the surcharge to ensure that the programs supported thereby are adequately funded and that the fund balances are not excessive. A fund balance which is projected to exceed six months' worth of projected expenses at the end of the fiscal year is excessive.~~

~~(h) The commission shall prepare and submit to the Legislature, on or before December 31, 1988, and annually thereafter, a report on the fiscal status of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision (d) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:~~

~~(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunication services.~~

~~(2) If and to the extent not prohibited under Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll-call rates, and, for usage in excess of those basic requirements, at rates which recover the full costs of service.~~

1 ~~(3) More efficient means for obtaining and distributing~~
2 ~~equipment to qualified subscribers.~~

3 ~~(4) The establishment of quality standards for increasing the~~
4 ~~efficiency of the relay system.~~

5 ~~(i) In order to continue to meet the access needs of individuals~~
6 ~~with functional limitations of hearing, vision, movement,~~
7 ~~manipulation, speech and interpretation of information, the~~
8 ~~commission shall perform ongoing assessment of, and if~~
9 ~~appropriate, expand the scope of the program to allow for~~
10 ~~additional access capability consistent with evolving~~
11 ~~telecommunications technology.~~

12 ~~(j) The commission shall structure the programs required by~~
13 ~~this section so that any charge imposed to promote the goals of~~
14 ~~universal service reasonably equals the value of the benefits of~~
15 ~~universal service to contributing entities and their subscribers.~~